

REMARKS/ARGUMENTS

Favorable reconsideration of this application, in light of the following discussion, is respectfully requested.

Claims 11-36 are pending; Claims 13, 14, 16, and 18-34 are withdrawn from consideration; no claims have been amended, newly added, or cancelled herewith.

In the outstanding Office Action, Claims 11, 12, 15, 17, 35, and 36 were rejected under 35 U.S.C. § 112, first paragraph; Claims 11, 12, 15, 17, 35, and 36 were rejected under 35 U.S.C. § 112, second paragraph; Claims 11, 12, 15, 17, 35, and 36 were rejected under 35 U.S.C. § 103(a) as unpatentable over Kieckhefer (U.S. Pat. No. 2,530,124) or Clay (U.S. Pat. No. 2,042,210); and Claims 11, 12, 15, 17, 35, and 36 were rejected under 35 U.S.C. § 103(a) as unpatentable over either Kieckhefer or Clay in view of either Hatch (U.S. Pat. No. 2,738,914) or Taylor (U.S. Pat. No. 1,966,469).

With regard to the rejection of Claims 11, 12, 15, 17, 35 and 36 under 35 U.S.C. § 112, first paragraph, that rejection is traversed. Support for the claimed thickness limitation may be found, for example, in the specification at page 7, lines 3-16. Accordingly, it is respectfully requested that the rejection of Claim 11 be withdrawn.

As no grounds were set forth for the rejection of Claim 12, although Claim 12 was indicated as rejected, Applicants assume that the rejection of Claim 12 and dependent Claims 17 and 36 was a typographical error. It is therefore respectfully requested that the rejections under 35 U.S.C. § 112, first paragraph be withdrawn.

As for the rejection of Claims 11, 12, 15, 17, 35, and 36 under 35 U.S.C. § 112, second paragraph, that rejection is also traversed. Again, although Claim 12 was indicated as rejected, no grounds for rejection were enumerated in the Office Action.

As for Claim 11, it is respectfully submitted that the corner described in Claim 11 is clear. More specifically, Applicants respectfully submit that one of ordinary skill in the art

would be able to determine the corner recited in Claim 11. It is therefore respectfully requested that this rejection be withdrawn.

Applicants have filed herewith a Declaration Under 37 C.F.R. § 1.132.¹ As set forth in the Declaration, the thickness and density limitations recited in independent Claims 11 and 12, respectively, yield unexpected improvements in bottle performance. As described in the Declaration, the Applicants have discovered that the claimed thickness and density ratios result in an unexpectedly large increase in bottle strength (both drop strength and compressive strength).

With regard to the rejection of Claims 11, 12, 15, 17, 35, and 36 under 35 U.S.C. § 103(a) as unpatentable over either Kieckhefer or Clay, that rejection is traversed.

At the outset, noted in MPEP § 2141.03, the prior art must be considered in its entirety, including the disclosures that teach away from the claims. See, e.g., W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 221 U.S.P.Q. 303 (Fed. Cir. 1983). It is respectfully submitted that this requirement has not been satisfied in this case.

Kieckhefer relates to a nested cup. Kieckhefer seeks to prevent stacked cups from becoming wedged together. To overcome this problem, Kieckhefer describes that the nesting engagement must be limited by contact between the walls and that the angularity of the walls must be such that the cups do not stack too closely.² The Office Action asserts at page 3 that it would have been obvious to one of ordinary skill in the art to provide an angle at 85° to provide the desired angle for the cup.

However, this modification is contrary to the teachings of Kieckhefer. Specifically, Kieckhefer teaches away from having an angle of 85° or greater between an outer surface of the side wall of the body and a ground contact plane of the bottom portion, as recited in

¹ Applicants note that the declaration attached hereto is incorrectly labeled a "Declaration Under 37 C.F.R. § 1.131." The information presented therein relates to information properly presented in a Declaration Under 37 C.F.R. § 1.132.

² Kieckhefer, col. 1, lines 15-20.

Claim 11, because cups having a sidewall angle of 85° or greater would stack too closely to prevent wedging. Therefore, as Kieckhefer teaches away from the limitations of Claim 11, it is respectfully submitted that Claim 11 patentably distinguishes over Kieckhefer.

Clay relates to a composition tray. The Office Action states at page 3 that Figure 6 and Figure 4 of Clay illustrate a pulp molded article having an angle of 85° or greater. However, there is no support in the teachings of Clay for this assertion. In fact, the description of Figure 6 in Clay does not indicate any angle of the tray at all.

Additionally, Claim 11 recites that the thickness T2 approximately continuously tapers into the thickness T1. As previously explained by the Applicants, Figure 4 of Clay illustrates a large bulge in the corner. Accordingly, the tray of Clay with a bulge at the corner does not have a thickness T2 approximately continuously tapering into a thickness T1. It is therefore respectfully requested that this rejection be withdrawn.

As for Claim 12, the Office Action again appears to take Official Notice at page 3 that the molded containers of Kieckhefer and Clay inherently have a density ρ_2 smaller than a density ρ_1 at portions 5 and 4 due to the molding process, but no specific teachings were cited in either reference to support that assertion.

It is respectfully noted that the Applicants previously requested that a reference be cited in support of this assertion. As stated in MPEP § 2144.03, "Official notice without documentary evidence to support an Examiner's conclusion is permissible only in some circumstances. While 'official notice' may be relied on the circumstances should be *rare* when an application is under final rejection." (emphasis added). Additionally, "it would not be appropriate for the Examiner to take official notice of facts without citing a prior art reference where the facts are asserts to be well-known are not capable of instant and an unquestionable demonstration as being well-known." (emphasis in original). Moreover, "It is never appropriate to rely solely on 'common knowledge' in the art without evidentiary

support in the record, as the principle evidence upon which a rejection was based.” Zurko, 258 F.3d at 1385, 59 U.S.P.Q.2d at 1697. Finally, “If applicant adequately traverses the Examiner’s assertion of official notice, the Examiner must provide documentary evidence in the next Office action if the rejection is to be maintained.” *See* 37 C.F.R. § 1.104(c)(2).

In light of the Applicants’ seasonable traversal of the Official Notice in the Office Action dated January 16, 2003, and the failure by the outstanding Office Action to provide evidentiary support of the Official Notice, this rejection should be withdrawn. **If a further rejection is intended, the finality of the outstanding Office Action must be withdrawn, as the Examiner’s burden has not been satisfied.**

Regarding the rejections of Claims 11, 12, 15, 16, 35, and 36 under 35 U.S.C. § 103(a) is unpatentable over either Kieckhefer or Clay in view of either Hatch or Taylor, this rejection is respectfully traversed.

As noted above, neither Kieckhefer nor clay discloses or suggests the features recited in Claims 11 and 12.

With regard to a proposed combination of Kieckhefer and Hatch it is respectfully noted that Kieckhefer teaches away from the applied combination of Hatch. Specifically, Kieckhefer, as noted above, describes that the wall angle of the nested cups must be such that the cups are not too closely stacked together. From this description, as earlier noted, it is evident that Kieckhefer teaches away from an angle between an outer surface of a side wall divided portion and a ground contact plane of the bottom portion being 85° or greater, as recited in Claims 11 and 12. Therefore, combining Kieckhefer with Hatch is contrary to the teachings of these references, and is therefore impermissible.

Regarding the applied combination of Kieckhefer and Taylor, it is respectfully submitted that neither Kieckhefer nor Taylor discloses or suggests the claimed angle between an outer surface of a side wall of the body portion and a ground contact plane of the bottom

portion being 85° or greater, as recited in Claims 11 and 12. More specifically, there is no written description of an angle between an outer surface of a sidewall of the body portion and a ground contact plane of the bottom portion being 85° or greater within Taylor.

Additionally, there is no disclosure or suggestion of a decreased density at the corners in either Kieckhefer or Taylor, as recited in Claim 12.

As for the combination of Clay with Hatch, even if these two references were to be combined, there is still no teaching regarding the increased thickness in the decreased densities at corner portions as recited in Claims 11 and 12, respectfully. Accordingly, it is respectfully submitted that the Office Action has failed to provide a *prima facie* case of obviousness regarding the features of Claims 11 and 12 by the application of a combination of Clay and Hatch.

With regard to the applied combination of Clay and Taylor, it is respectfully submitted that the Office Action has again failed to provide a *prima facie* case of obviousness. Specifically, there is no disclosure or suggestion in the teachings of either of these references regarding the increased thickness or decreased density of the corners, as recited in Claims 11 and 12, respectively. Moreover, there is no disclosure or suggestion in the applied combination of Clay and Taylor that an angle between an outer surface of a side wall of the body portion and a ground contact plane of the bottom portion is 85° or greater, as recited in Claims 11 and 12.

Accordingly, in light of the foregoing discussion, it is respectfully submitted that Claims 11, 12, 15, 16, 35, and 36 patentably distinguish over the applied combinations of Kieckhefer, Clay, Taylor, and Hatch. It is therefore respectfully requested that the outstanding rejections of Claims 11, 12, 15, 16, 35, and 36 be withdrawn.

However, even if the cited references create a *prima facie* case of obviousness (something that is not admitted), any such *prima facie* case may be rebutted by evidence of superior or unexpected results. See MPEP § 716.02 - § 716.02(g).

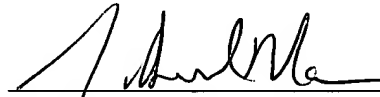
As explained in the declaration filed herewith, the thicknesses T1 and T2 recited in Claim 11 and the densities recited in Claim 12 provide unexpectedly superior results over the closest prior art. Specifically, the drop strength and compressive strength of the molded articles formed according to Claims 11 and 12 are greatly improved.

Therefore, Applicants respectfully submit that any *prima facie* case of obviousness as to Claims 11 and 12 has been overcome by the data set forth in the concurrently filed declaration, and it is respectfully requested that the outstanding rejections be withdrawn.

Consequently, in view of the foregoing discussion, it is respectfully submitted that this application is in condition for allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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